

**आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'सी' अहमदाबाद ।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“ C ” BENCH, AHMEDABAD**

सर्वश्री एन.के. बिल्लैया, लेखा सदस्य एवं महावीर प्रसाद, न्यायिक सदस्य के समक्ष ।  
**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER And**  
**SHRI MAHAVIR PRASAD, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No. 2084/Ahd/2014  
(निर्धारण वर्ष / Assessment Year : 2010-11)

Dy. Commissioner of Income Tax(OSD) Circle – 8, Ahmedabad - 380015	<b>बनाम/</b> Vs.	Voltamp Transformers Ltd. 312 Sanman II, OPP Reliance Petrol Pump, Prahladnagar, Satellite, Ahmedabad - 380054
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACV 5048 G</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Shri Prasoon Kabra, Sr.D.R.
प्रत्यर्थी की ओर से/Respondent by :	Shri Ashwin Shah, C.A.

सुनवाई की तारीख / Date of Hearing	12/09/2017
घोषणा की तारीख/Date of Pronouncement	26/09/2017

**आदेश / O R D E R**

**PER SHRI MAHAVIR PRASAD, JUDICIAL MEMBER :**

This is an appeal by the department against the order of the Commissioner of Income Tax(Appeals)-XIV, Ahmedabad, dated 19/04/2014 for the Assessment Year (AY) 2010-11, on the following Grounds:

- i. *The Ld. CIT(A)-XIV, Ahmedabad has erred in law and on facts in deleting the addition of Rs.2,744/- made on account of disallowance of interest u/s.36(1)(iii) of the Act.*

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- ii. *The Ld. Commissioner of Income-Tax (Appeals)-XIV, Ahmedabad has erred in law and on facts in deleting the addition of Rs.4,11,74,780/- made on account of disallowance of CENVAT receivable.*
- iii. *The Ld. Commissioner of Income-Tax (Appeals)-XIV, Ahmedabad has erred in law and on facts in deleting the disallowance of excess depreciation amounting to Rs.19,21,243/- on new vehicles, not registered with RTO as Commercial Vehicle & hence, not eligible for higher rate of depreciation.*
- iv. *The Ld. Commissioner of Income-Tax (Appeals)-XIV, Ahmedabad has erred in law and on facts in deleting the addition of Rs.8,27,707/- made on account of disallowance of depreciation on computer software part & parcel of computer & hence, liable to be treated as capital assets eligible to claim only depreciation.*
- v. *The Ld. Commissioner of Income-Tax (Appeals)-XIV, Ahmedabad has erred in law and on facts in deleting the addition of Rs.69,48,260/- made on account of disallowance U/s.14A of the Act, r.w.r. 8D when Assessee had failed to prove nexus of utilization of funds for making investments to earn exempt income.*
- vi. *The Ld. Commissioner of Income-Tax (Appeals)-XIV, Ahmedabad has erred in law and on facts in deleting the addition of Rs.32,215/- made on account of disallowance u/s.14A of the Act, r.w.r. 8D., and Rs.32,215/- being interest on TDS to the Book profit computed U/s.115JB of the Act.*

2. The relevant facts as culled out from the materials on record are as under:-

In this case, assessee's company is engaged in the business of Manufacturing of Transformers. From the records it was observed that the assessee had shown the Capital WIP at Rs.3,53,22,706/-. Then

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assessee was requested to show-cause as to why the proportionate interest expense related to source of such Capital WIP should not be disallowed?

2.2 In response to the same the assessee submitted his reply as under:

*"The funding for capital work in progress including capital advances of Rs.3.53 Crores is made from owned funds and not from borrowed funds. The company has not availed any term loans or the closing balance of working capital loans is NIL as on 31<sup>st</sup> March,2010. The company has net worth of Rs.332. 45 Crores and the current year profit after tax is Rs.82.53 Crores. Further the interest payment of working capital loan is only Rs.2.58 Lacs, Thus, the entire payments for new assets is made from owned funds and not from borrowed funds and therefore question of capitalization of interest or disallow of interest does not arise"*

The reply of the assessee was not tenable in the eyes of the Assessing Officer.

3 Hence, the proportionate interest u/s.36(1)(iii) is disallowed at Rs.2,744/- being capitalized and added back to the total income of the assessee.

3.2 Ld. CIT(A) held that the appellant contended that on similar facts and similar contention by both AO as well as appellant, learned CIT(A)-XIV, Ahmedabad in appellant's own case for Asst. Year 2009-10 in appeal No.CIT(A)-XIV/Jt.CIT R.8/238/2011-12 vide order dated 21/05/2012 vide para 2.3 allowed such interest claim and deleted the addition. Further, Hon'ble ITAT, Ahmedabad 'B' Bench in order dated 22/03/2013 on revenue appeal against learned CIT(A)-XIV, Ahmedabad

order dated 21/05/2012 on this issue vide para 3.1 dismissed revenue appeal.

3.3 In our considered opinion findings of the ITAT must be followed. Therefore, we do not want to interfere in the order passed by the learned CIT(A). In the result, this ground of department is dismissed.

4 During the course of Asst. Proceedings, it was observed that the assessee had shown the amount receivable on account of unutilized/closing balance on account of MODVAT/CENVAT credit under “Loans and Advances” and the same was not included in the value of closing stock. Since the provisions of section 145A of the Act requires that the taxes/duty/cess/fees related to stock need to be included in the value of closing stock, so assessee was requested to explain the reasons for exclusion of MODVAT/CENVAT from closing stock and show-cause why the same should not be included in the value of closing stock as per provisions of section 145A of the Act. In response to the same assessee vide its letter dated 30/01/2013 has submitted as under:

*"You are inquired above the inclusion of the CENVAT balance in the valuation of closing stock and compliance to section 145A.*

*In this connection it may be please noted that as per AS-2 on valuation on inventory, the purchases are debited net off CENVAT and the closing stock of Raw Material and WIP is valued net off CENVAT, since the cost of purchases does not include CENVAT paid and therefore, the closing stock is also valued net off CENVAT. The company does not have any stock of Finished Goods as on 31<sup>st</sup> March, 2009 and therefore; there is no question of inclusion of CENVAT in the stock of Finished*

*Goods. Further, the unutilized balance of CENVAT is not a income and is used against Excise Duty Payable in the subsequent year, and therefore the same cannot be treated as income, The details of the CENVAT credit utilized is give in Schedule - 8 to the Tax Audit Report. It may also be noted that the cost of Raw material debited to profit and loss account does not include excise duty paid on purchases and therefore the question of inclusion of unutilized excise duty in the closing stock does not arise. This principle is settled by Supreme court in the case of Chainroop Sampatram. Further the unutilized balance of CENVAT credit cannot be included in the closing stock is also taken by Gujarat HC in case of Narmada chematur Private Limited. The Suoreme court also confirmed the principle settled in Chainroop sampatram in CIT vs. Dynavision Ltd. Civil Appeal No.197 of 2005. The CIT(A) has deleted the addition.”*

4.2 The Assessee’s submissions were not acceptable by the Assessing Officer and the sum of Rs.4,11,74,780/- being the amount of unutilized balance of taxes were added back to the total income.

4.3 Ld. CIT held that appellant’s appeal Ground is covered by Hon’ble Jurisdictional High Court in the matter of Narmada Chemature Petrochemicals Ltd. (supra), Hon’ble Supreme Court decision in the case of Dynavision Ltd. (supra), follows an exclusive method of accounting CENVAT and as per tax audit report a reconciliation statement reflect that such method is revenue neutral. The appellant contended that in view of Hon’ble Supreme Court decision in the case of Indo Nippon Chemicals Ltd. (supra), CENVAT receivable is not an income.

4.4 In our considered opinion, this issue is covered by the ITAT order dated 22/03/2013 in ITA No.1676/Ahd/2012 Para No.7.1 on Page No.8 in Asst. order. AO has verified the revenue neutral statement and Hon'ble Supreme Court has held in the case of CIT vs. Indo Nippon Chemicals Ltd., as under:

*“It is not open to the Assessing Officer to treat outgoings as income under section 145 of the Income Tax Act, 1961.*

*Whatever method the Assessing Officer adopts after invoking section 145, it has to be consistent with accepted principles of accountancy.*

*The assessee, which were manufacturing units, were liable to excise duty on the goods manufactured by them. Under the Modvat Scheme the assessee got credit for the excise duty already paid on the raw materials purchased by them and utilized in the manufacture of excisable goods. When they manufactured the goods and sold them the proportionate part of the Modvat credit was set off against their duty liability. The assessee had, in valuing their stock, uniformly adopted the “net method”, viz., valuing the raw materials at the purchases price minus the Modvat Credit. This method was also adopted while valuing the unconsumed raw materials and the work in progress at the end of the year. The Assessing Officer took the view that the Modvat Credit should be treated as an income or advantage in the nature of income and added back the Modvat Credit. The Tribunal held that the Modvat Credit could not be added back to the income of the assessee.”*

4.5 Therefore, we do not want to interfere in the order passed by the learned CIT(A). In the result, this Ground of department is dismissed.

5 From the record it was observed by the AO that the assessee had claimed depreciation @50% on certain vehicles acquired by it. Since the said vehicle was not registered by the RTO as “Commercial Vehicle”, so

the assessee was requested to justify the said claim. In response to the same, assessee submitted as under:

*"...The claim of depreciation on Vehicles @50% is taken on basis of Notification Number 10/2009 dated 2009 which may also be seen from note number 2 of Annexure 3 of 3CD report. This notification is also included in the depreciation appendix under IT rules at entry number III (3) (via) under Part A.*

*The appendix 1 of depreciation under income tax rules at entry number III (3)(via) under Part A provides for rate of depreciation in respect of new commercial vehicles acquired between 1<sup>st</sup> January 2009 to 30<sup>th</sup> September 2009. Further the definition of commercial vehicles is given as serial No.6 to the notes in the said depreciation appendix. The vehicles purchased by the assessee company falls within the definition of commercial vehicles and accordingly the company has rightly claimed depreciation at the rate of 50% on such vehicles."*

5.2 Assessee's submissions were considered carefully but not found acceptable by the learned AO.

5.3 The disallowance of excess depreciation amounting to Rs.19,21,243/- were added to the total income.

5.4 The appellant contended before the CIT(A) that similar issue on similar facts and contention had already been decided in favour of the assessee by the CIT(A)-XIV, Ahmedabad in its own case for Asst. Year 2009-10 vide order dated 21/05/2012 and revenue appeal against this was dismissed by Hon'ble ITAT, Ahmedabad in ITA No.1676/Ahd/2012, vide order dated 22/03/2013., in this case, Hon'ble ITAT held that as under:

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*“On hearing of the submission, we are not inclined to interfere with the legal findings of learned CIT(A). In our opinion, he has correctly interpreted the Appendix. Therefore, this ground of the Revenue is dismissed.”*

5.5 Respectfully, following the decision of Coordinate Bench, we dismiss this Ground of department.

6 From the Schedule of fixed asset it was observed by the AO that the assessee has shown “Computer software” under the head “Intangible assets”. However the assessee had claimed depreciation on same @60%. Hence, assessee was requested to explain as to why the higher rate of depreciation on computer software should not be disallowed. In response to the same assessee submitted as under:

*"The computer software has been classified as intangible assets in the books of account as per the requirement of AS-26 on intangible assets. The computer software is included in the entry of computers at entry no.5 of para III of Part A of the depreciation appendix in the income tax rules. The software has also been defined in note no.7 to the said appendix. The deprecation appendix specifically includes computer software as part of computers eligible for depreciation at 60% and the same is not a part on intangible assets in the depreciation appendix. Therefore, the company has rightly claimed depreciation on software at the rate of 60%. The CIT appeals has deleted the addition. The addition of Rs 352764/- during the year is of application software."*

6.2 The assessee's submissions have been considered carefully but not found acceptable by the Ld. AO.

6.3 The learned CIT(A) held that the contention of the appellant that since there is no difference between ‘system software’ and ‘application

software' as per the definition provided at Note No.7 with Appendix-1 for depreciation rate, such uniform rate of depreciation at 60% is applicable to all type of 'computer software'.

6.4 We have gone through the record and in our considered opinion, this issue is covered in assessee's own case in ITA No.1676/Ahd/2012 for A.Y.2009-10. Hon'ble Coordinate Bench of ITAT held this issue in favour of the assessee. Respectfully following the order of the ITAT Bench, we do not want to interfere in the order passed by the learned CIT(A). Therefore, we dismiss this Ground of department.

7. During the course of assessment proceedings, it was found that the assessee had claimed Rs.3,03,05,146/- as dividend income which is exempt. The assessee was requested to explain whether any expense has been incurred for earning of exempt income, i.e. whether any expense is disallowable u/s.14A of the Act r.w.r. 8D of the Income tax Rule. In response to the same the assessee had explained expense incurred for earning exempt income has already been disallowed. However it was found that the disallowance was not made as per rule 8D. Accordingly, assessee was given a show cause as to why disallowance should not be made u/s.14A of the Act r.w.r. 8D of the I.T. Rules.

7.2 In response to the same the assessee submitted as follows:

*"In this connection it may please be noted that investment in Mutual funds as on 31/03/2010 stands at Rs.69.84 crores as compared to*

*Rs.88.38 crores as on 31/03/2009. The company has not availed borrowed funds which may be seen from the reserves. The reserves as on 31/03/2010 stood at Rs.322.34 which is substantial. The company has kept a person to keep track of all mutual funds salary of which is disallowed u/s.14A as may be seen from computation of income. Thus no new investment is made during the year and net result is redemption of the funds instead of new investment. The company has not incurred any expenditure whatsoever other than that already disallowed on the investment outstanding as on the balance sheet date. Hence, no further disallowance may be made.”*

7.3 The assessee’s contention was considered carefully but not found acceptable by the AO and stated that assessee has given only general explanation that it has not incurred any expenses, other than what has been disallowed suo motto, related to the exempt income claimed by it. However, the assessee has not submitted any proof or specific explanation other than the said general explanation. No day to day fund flow has been submitted. In absence of such fund flow the assessee’s claim that no interest bearing funds were diverted for the investment in said shares/securities remains unsubstantiated.

7.4 In first statutory appeal before the Learned CIT(A) citing following judgment as under:

<i>Sl. No.(s)</i>	<i>Decision in the case of ....</i>	<i>ITA No(s).....</i>
1.	<i>M/s. Essar Teleholdings Ltd. vs. DCIT</i>	<i>Vs. DCIT Mumbai in ITA No.3850/Mum/2010 for Asst. Year 2005-06 order dated 29/07/2011.</i>
2.	<i>Quippo Telecom Infrastructure Ltd. vs. Asst. CIT</i>	<i>ITAT “F” Bench New Delhi in ITA No.4931/Del/2010 for A.Y.2007-08 order dated</i>

		<i>18/02/2011</i>
<i>3.</i>	<i>ACIT vs. JK Paper Ltd. and JK Paper Ltd. vs. ACIT (Cross appeals)</i>	<i>ITAT “D” Bench Ahmedabad in ITA Nos.979/Ahd/2006 for A.Y. 2002-03, ITA Nos.578&amp;738/Ahd/07 (A.Y.2003-04) and ITA Nos.346 &amp; 390/Ahd/2008 (A.Y. 2004-05) order dated 04/09/2009.</i>

*Respectfully following the aforementioned orders as also the decision of Hon’ble Apex Court in the case of Apollo Tyres Ltd. vs. CIT reported at [2002] 255 ITR 273(SC) duly referred in the cited precedents, we hereby direct the Assessing Officer not to make any adjustment in respect of disallowance made u/s.14A of the I.T. Act while computing the book profit u/s.115JB of the I.T. Act. We order accordingly and the substantial ground is hereby allowed.”*

7.5 In our considered opinion, this case is covered by the judgment of the Jurisdictional High Court, CIT vs. Gujarat State Fertilizers & Chemicals Ltd. [2013] 36 taxmann.com 230 (Gujarat). Hon’ble High Court held that “when the employment of Section 14A is not found correct, there does not arise any question of determining the amount of expenditure in absence of Rule 8D, on the basis of reasonable and acceptable method of apportionment. In this case, assessing officer disallowed the sum of Rs.1,14,43,040/- u/s.14A of the Act towards interest and other expenses incurred in relation to exempted income of dividend. The Assessing Officer on the ground that the assessee utilized the interest bearing borrowed funds for non-business purpose disallowed such expenses to the tune of 10% of the dividend income. The Assessing Officer was of the opinion that the onus was not discharged by the respondent-assessee to establish that the investment from where dividend

has been received during the Assessment Year 2004-05, was out of its own funds and no borrowed funds have been utilized for making such investment on the basis of cash/fund flows statement and, therefore, on estimated basis it deducted 10% of the total dividend income as expenditure including the interest in relation to earning of exempt income. CIT(A) held that Assessing Officer had failed to clearly show that any particular expenditure was incurred by the assessee to earn exempt dividend income and deleted ad hoc disallowance. The Tribunal was of the firm opinion that the respondent-assessee's own funds were higher than the investment made by the assessee and, therefore, interest bearing funds were diverted for making investment in shares and, therefore, under section 14A of the Act, it held that there is no question of disallowance under section 14A of the Act in respect of interest expenditure.

7.6 Respectfully following the Jurisdictional High Court judgment, we dismiss this Ground of appeal.

8. The learned AO has disallowed 0.5% expenditure of Rs.72,83,252/- which is reduced to extent of Rs.3,34,992/- being the expenditure disallowed by the assessee amounting to net disallowance of Rs.69,48,260/-. In the present case, assessee has earned dividend income of Rs.3,03,05,146/- from mutual funds. The opening balance of mutual fund of Rs.88.38 Crore and the closing balance is Rs.69.84 Crore. It follows that the assessee has not purchased any new mutual fund and that

only some mutual fund are redeemed. The assessee employed one officer to deal with the mutual fund. His salary is disallowed by the assessee himself. The collection of mutual fund dividend is received by EC and therefore the question of incurring any expenditure on that account does not arise. Therefore, the actual expenditure incurred is disallowed. It is not correct to disallow 0.5% as per Rule 8D in the absence of any specific finding by the AO. This issue partly allowed by the learned CIT(A).

8.2 We have gone through the record, learned CIT(A) added interest on TDS of Rs.32,215/-, addition is accepted to the Book Profit computed u/s.115JB. However, no addition u/s.14A in the regular assessment can be made while computing book profit u/s.115J. This Ground is also covered by the decision of Jurisdictional High Court in the matter of CIT vs. Gujarat State Fertilizers and Chemicals Ltd. [2013] 358 ITR 323 (Guj), wherein it is held that:

*“Disallowance in respect of interest expenditure not permissible – Where on facts section 14A not applicable no question of determining expenditure on reasonable basis and Payment to Financial consultants for professional services in connection with corporate debt restructuring by negotiating with banks and financial institutions – Expenditure for purpose of business and allowable in entirety in year in which incurred. In such case, department is not entitled to observe.”*

8.3 Respectfully following the Jurisdictional High Court’s order, we dismiss this Ground of department.

9. In the result, appeal filed by the department is dismissed.

**This Order pronounced in Open Court on 26/09/2017**

Sd/-  
एन.के. बिल्लैया  
(लेखा सदस्य)  
( N.K. BILLAIYA )  
**ACCOUNTANT MEMBER**

Sd/-  
महावीर प्रसाद  
(न्यायिक सदस्य)  
( MAHAVIR PRASAD )  
**JUDICIAL MEMBER**

Ahmedabad; Dated 26/09/2017

*Priti Yadav, Sr.PS*

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-XIV, Ahmedabad.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad